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|---|-------------|----------------------|---------------------|------------------|
| 10/509,820  | 07/15/2005  | Barbara Ammer        | AMMER ET A 3 PCT    | 8133             |
| 25889   | 7590        | 01/16/2008           | EXAMINER            |                  |
| WILLIAM COLLARD<br>COLLARD & ROE, P.C.<br>1077 NORTHERN BOULEVARD<br>ROSLYN, NY 11576 |             |                      | HOEY, ALISSA L      |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3765                |                  |
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|   |             |                      | 01/16/2008          | PAPER            |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/509,820

Applicant(s)

AMMER ET AL.

Examiner

Alissa L. Hoey

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. This is in response to RCE received on 11/29/07. Claims 2, 3, 5 and 6 have been amended, claims 1 has been cancelled and claim 7 has been newly added. The amendments to the specification received on 11/29/07 have been entered into the case. Claims 2-7 are examined below.

### ***Specification***

2. The rejection under 35 USC 112 has been withdrawn due to the evidence submitted. However, there are still problems with identifier 7, if it is supposed to be showing the aluminum-chlorate strip, since 7 is defined in this originally filed specification as the under arm panel. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 7 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Oliver (US 2,818,572).

In regard to claim 7, Oliver teaches a perspiration pad (1, 2) for insertion to a user's armpit (figure 1). The perspiration pad having an absorbent pad comprising two mutually bendable sections (1, 2, 1a, 1b, 2a, 2b, 3a, 3b) and a self-adhesive sheet (4) bonded to the sections and projecting beyond the edge of the pad, wherein the self-

adhesive film is interrupted at least in the bending region of the two sections of the pad (figures 8 and 9 and column 1, lines 42-55). Further, Oliver teaches pad resting on the wearer's skin in the bending region where the self-adhesive sheet is interrupted (see figures 8 and 9, identifier 9).

In regard to claim 5, Oliver teaches the perspiration pad has a substantially trapezoid configuration (figures 8).

5. Claims 7, 3 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Vadekerck (US 2,669,720).

In regard to claim 7, Vadekerck teaches a perspiration pad (10) for insertion to a user's armpit (figure 5). The perspiration pad having an absorbent pad comprising two mutually bendable sections (figures 1 and 4) and a self-adhesive sheet (15) bonded to the sections and projecting beyond the edge of the pad, wherein the self-adhesive sheet is interrupted at least in the bending region of the two sections of the pad (figures 1, 2 and 4 and column 3, lines 5-14).

In regard to claim 3, Vadekerck teaches the self-adhesive sheet (15) comprising a plurality of boundary strips bonded to the edges of the pad sections (figures 1, 3, 4 and column 3, lines 5-14).

In regard to claim 6, Vadekerck teaches the self-adhesive sheet being bonded together with the pad in the boundary region of the pad (column 2, lines 13-31).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3765

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oliver in view of Bradley (US 3,345,643).

Oliver teaches a perspiration pad as described above in claim 1. However, Oliver fails to teach at least one curved bending line being provided in the bending region of the pad.

Bradley teaches a perspiration pad with at least one curved bending line being provided in the bending region of the pad.

It would have been obvious to have provided the perspiration pad of Oliver with the curved bending lines of Bradley, since the perspiration pad of Oliver provided with curved bending lines would provide even greater comfort to the user during movement when wearing the perspiration shield.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vandekerck in view of Morris (US 3,346,878).

Vandekerck teaches a perspiration pad as described above in claims 1 and 3. However, Vandekerck fails to teach the pad being covered in a liquid-tight but gas-permeable way on the side averted from the skin both between the boundary strips of the self-adhesive sheet as well as in the benign region.

Morris teaches a perspiration pad being covered in a liquid-tight but gas-permeable way on the side averted from the skin both between the boundary strips of

the self-adhesive film as well as in the bending region (column 3, lines 1-11, lines 47-53 and column 4, lines 5-15).

It would have been obvious to have provided the perspiration pad of Vandekerck with the liquid-tight and gas permeable backing portion of Morris, since the perspiration pad of Vandekerck provided with the liquid-tight gas permeable backing portion would provide a perspiration pad that not only keeps perspiration from contacting the user's garments, but also a comfortable, breathable pad that is comfortable to wear.

### ***Response to Arguments***

9. Applicant's arguments filed 11/29/07 have been fully considered but they are not persuasive. The claims were amended without adding any additional structure, only functional language.

1) Applicant argues that Oliver fails to teach a self-adhesive sheet bonded to the two mutually bendable sections of an absorbent pad. Wherein the self-adhesive sheet is interrupted in at least a bending region of the two sections of the pad so that in the bending region where the self-adhesive sheet is interrupted the pad rests on a wearer's skin.

Examiner disagrees since Oliver teaches a region of the adhesive interrupted in two portions of the bending region (see figures 8 and 9). The ends of bending region comprises an interrupted self-adhesive sheet. Therefore the Oliver reference teaches the limitations as claimed. The claims as amended do not add any additional structure to the claims, only functional language. As, amended Oliver still teaches the self adhesive sheet interrupted at least in a bending regions of the two sections, since a

portion of the bending (figures 8 and 9) illustrate a portion of the pad without a backing layer and therefore the backing layers' adhesive at the end portions of the bending region. The pad rests on the user's skin along the entire length of the pad including the region that provides no backing layer (see figures 8 and 9).

II) Applicant argues the Vandekerck fails to teach interruption of layers 11 and 19 in the bending region 14 so that in the bending region the self-adhesive sheet is interrupted the pad rests on the wearer's skin.

Examiner disagrees, since Vandekerck teaches the self-adhesive layer (15 see figures 1, 4 and 3) being interrupted in the bending region (identifier 14, figures 1 and 11). Examiner does not understand how identifiers 11 and 19 have any relevance to the self-adhesive layer and the interrupted region. Therefore self-adhesive layer 15 is interrupted at the bending region 14, clearly shown in figure 3. Additionally, in column 2, lines 13-25, Vandekerck, teaches that the adhesive is only applied over portions of the marginal segment so that the free spaces will allow for sufficient ventilation (see column 2, lines 48-55). The pad of Vandekerck rests on the user's skin along the entire length of the pad including the bending region (see figure 3).

### ***Conclusion***

10. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued

examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ALH

/Alissa L. Hoey/  
Primary Examiner, Art Unit 3765